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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,787	06/26/2003	Richard D. Lee	FINEL:63549	6894

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EXAMINER

WRIGHT, ANDREW D

ART UNIT	PAPER NUMBER
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3617

DATE MAILED: 01/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/608,787

Applicant(s)

LEE ET AL.

Examiner

Andrew Wright

Art Unit

3617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 December 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1, 2 and 4-22.

Claim(s) withdrawn from consideration: _____.

8. ☒ The drawing correction filed on 15 December 2004 is a) ☒ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____.

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Continuation of 2. NOTE: The proposed amendments to independent claims 1, 8, and 17 change the scope of the claims such that further consideration and search would be necessary.

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's arguments regarding independent claim 10 are not persuasive. Claim 10 recites "such that directing the engine exhaust out of one of the exhaust outlets prevents directing the engine exhaust out of the other of the exhaust outlets". Polakowski has a mode of operation that satisfies this claim limitation. In Polakowski, when the linkage is in the full rotated clockwise position, the apparatus is directing engine exhaust out of one exhaust outlet and preventing the engine exhaust from being directed out of the other outlet.

Applicant's arguments regarding claim 5 are not persuasive. Polakowski uses the phrase "mechanical linkage" in lines 35-40 while referring to the control mechanism described with respect to figures 11-16. Furthermore, even assuming for argument's sake that applicant's dictionary definition is read into the claim language, Polakowski still reads on the claim. First, claim 5 recites "comprises a mechanical linkage between the valves". The lever (170) is pivotally supported by a rod (172). Therefore the tethers need not be considered and the lever is part of a mechanical linkage. Second, even if the tethers are considered, they still constitute a rigid body. The degree of rigidity is not claimed or defined in the specification. Every material has some inherent degree of rigidity. The inherent rigidity of the tether, regardless of how small it may be, reads on the provided definition.

Applicant's arguments regarding claims 4 and 13 are not persuasive. Polakowski discloses electrically controlled valves (controlled directly by a servomotor). Polakowski discloses that the valves would be controlled by a switch. The switch constitutes the "controller unit" that is recited in claims 4 and 13.

AW 1/10/05
ANDREW D. WRIGHT
PRIMARY EXAMINER